



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2023-0243; FRL-10914-01-OGC]

Proposed Settlement Agreement, Clean Water Act and Administrative Procedure Act Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with the EPA Administrator’s March 18, 2022, memorandum regarding “Consent Decrees and Settlement Agreements to resolve Environmental Claims Against the Agency,” notice is hereby given of a proposed settlement agreement that would resolve *Chesapeake Bay Foundation, Inc. et al. v. U.S. EPA et al.*, No. 1:20-cv-2529 (D.D.C.). On September 10, 2020, four states—Maryland, Virginia, Delaware, and the District of Columbia—and a number of non-state plaintiffs including the Chesapeake Bay Foundation (“CBF”) and Anne Arundel County (“Plaintiffs”) filed complaints in the U.S. District Court for the District of Columbia. The Plaintiffs asserted that EPA has a mandatory duty under the Clean Water Act (“CWA”) to ensure that the goals of the Chesapeake Bay Agreement are met, and that EPA failed to perform that duty. Plaintiffs also asserted that EPA’s evaluation of Pennsylvania’s 2019 plan for implementing the Chesapeake Bay TMDL was arbitrary and capricious in violation of the Administrative Procedure Act (“APA”). EPA seeks public input on a proposed settlement agreement prior to its final decision-making with regard to potential settlement of the litigation.

DATES: Written comments on the proposed settlement agreement must be received by

[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0243 online at <https://www.regulations.gov> (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action.

Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments, see the “Additional Information About Commenting on the Proposed Settlement Agreement” heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Alec Mullee, Water Law Office, Office of General Counsel, U.S. Environmental Protection Agency telephone: (202) 564-9616; email address: mullee.alec@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

The Chesapeake Bay Program (CBP) partnership collaborates to restore the water quality of the Chesapeake Bay, primarily through a series of Chesapeake Bay Agreements. The CBP partnership includes the states in the Chesapeake Bay watershed—Delaware, Maryland, Pennsylvania, New York, Virginia, West Virginia, and the District of Columbia—the Federal government led by EPA, and numerous other stakeholders. The CBP partnership agreed upon a goal of having all practices and controls installed by 2025 to achieve the Bay’s dissolved oxygen, water clarity/submerged aquatic vegetation and chlorophyll-a water quality standards (2025 Goal). The 2025 Goal is reflected in the latest Chesapeake Bay Agreement. In 2010, in collaboration with the Bay states, EPA established a Total Maximum Daily Load (TMDL) for the entire Chesapeake Bay watershed for nitrogen, phosphorus and sediment to address the aquatic life use impairments of tidal Bay waters and tidal tributaries. In 2019, the Bay states submitted their latest plans for implementing the Bay TMDL to EPA for evaluation. EPA’s evaluation of Pennsylvania’s plan concluded that, while the state plan would meet its numeric planning target for phosphorus, it would not meet its target for nitrogen by 2025. In 2022, Pennsylvania submitted an amended plan to EPA for evaluation, which EPA found still did not meet the state’s nutrient goals.

On September 10, 2020, the Plaintiffs filed complaints, later consolidated, against EPA in the U.S. District Court for the District of Columbia. The parties have negotiated this proposed settlement agreement. EPA would agree in the proposed settlement agreement to take a number of steps regarding EPA oversight and funding of Pennsylvania's efforts under its CWA programs to reduce nutrient and sediment discharges within Pennsylvania's portion of the Bay watershed. EPA would also agree to evaluate by the end of 2026 how each Bay state fared in meeting the 2025 Goal.

For a period of thirty (30) days following the date of publication of this notice, EPA will accept written comments relating to the proposed settlement agreement from persons who are not parties to the litigation. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments received disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Clean Water Act or Administrative Procedure Act.

II. Additional Information About Commenting on the Proposed Settlement Agreement.

A. How can I get a copy of the proposed settlement agreement?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2023-0243) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

The electronic version of the public docket for this action contains a copy of the proposed settlement agreement and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the

contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

B. How and to whom do I submit comments?

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0243 via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section of this document.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be

able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. We strongly encourage you to send your comments electronically to ensure that they are received prior to the close of the comment period. The electronic public docket system is an “anonymous access” system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA does not plan to consider these late comments.

Steven Neugeboren,

Associate General Counsel.

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